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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 721

ANTHONY AND MARY LOU MASTROPOLE,

versus

TRANSIT HOMES, INC. AND LEON TODD OF WHOM TRANSIT HOMES, INC., IS PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	3
Reasons for Granting Writ	5
Conclusion	9

CITATION OF CASES AND AUTHORITIES

	Page
29 American Jurisprudence, (2d), Evidence, Sec. 32 ..	7
Adams v. Croninger, 226 U. S. 491, 33 S. Ct. 148, 57 L. Ed. 319	6
Huddy v. Railway Express Agency, Inc., 181 S. C. 508, 188 S. E. 247	9
Missouri Pacific Railway Co. v. Elmore and Stahl, 377 U. S. 134, 84 S. Ct. 1142, 12 L. Ed. (2d) 194	5
St. Louis Mountain and Southern Railway Co. v. C. A. Starbird, 243 U. S. 592, 37 S. Ct. 462, 61 L. Ed. 917 ..	6

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The Petitioner, Transit Homes, Inc., prays that a Writ of Certiorari issue to review the opinion of the South Carolina Supreme Court rendered and filed on June 17, 1970.

OPINIONS BELOW

The opinion of the South Carolina Supreme Court, No. 19068, is as yet unreported. It appears here as Appendix A., p. 13, *infra*.

JURISDICTION

The opinion of the South Carolina Supreme Court on June 17, 1970. Petition for Rehearing was duly filed and was denied on July 7, 1970. This Petition for Certiorari is filed less than ninety (90) days from the date aforesaid. Stay was granted by Justice Thomas P. Bussey of the South Carolina Supreme Court by Order of July 24, 1970, which appears as Appendix B. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3).

QUESTIONS PRESENTED

This was an action for property damage to a mobile home being transported by Petitioner in interstate commerce from Virginia to South Carolina. The owners were awarded $5,103.00 actual damages and $45,000.00 punitive damages by a jury in the lower court, which was affirmed on appeal by the South Carolina Supreme Court. The questions are as follows:

(1) Should the State Court have applied the applicable Federal Law, specifically the Carmack-Cummins Amendment, 49 U. S. C. Sec. 20 (11) and the Federal decisions with regard to punitive damages?

(2) Was the lower court required to take judicial notice of Federal Statutes?

(3) Should the South Carolina Supreme Court have granted a new trial in order that the case be tried under the applicable Federal Law?

STATUTE INVOLVED

The Carmack-Cummins Amendment, 49 U. S. C. Sec. 20 (11) J. See Appendix C.

STATEMENT OF FACTS

This action was brought in the Court of Common Pleas for Beaufort County, South Carolina. The Plaintiffs alleged that they were the owners of a mobile home valued at $6,500.00 and that Petitioner, Transit Homes, Inc., agreed to transport the mobile home from Stafford, Virginia to Beaufort, South Carolina, under a bill of lading, and took possession of the trailer on July 1, 1968. The trailer was actually delivered on July 29, 1968 in a damaged condition. The Complaint alleged that loss was due to negligence and recklessness of Transit Homes, Inc., its agents or servants, and sought $100,000.00 in actual and punitive damages.

At a conference with the Presiding Judge before commencement of trial, the Plaintiff's Attorney stated: "The case is governed by I. C. C. Laws . . ." Defendant's counsel agreed. (Transcript of Record of Proceedings in Court of Common Pleas for Beaufort County, hereinafter referred to as Transcript) p. 13.

The bill of lading introduced into evidence provided on its face that it was an ICC form and that the property is received "subject to the provisions of the Motor Carriers Act of 1935 and tariffs in effect on date of issue of this receipt."

The Trial Judge ruled that he was not required to take judicial notice of Laws of the United States. (Transcript, p. 285.) The Court did not charge with reference to the Carmack-Cummins Amendment, 49 U. S. C. Sec. 20 (11) and the matter was presented to the jury as a negligence action under the laws of South Carolina, which authorized punitive damages against a corporation on a showing of recklessness, wilfulness and wantonness on the part of an agent. (Transcript, p. 315.)

The issue of the Federal Law with regard to punitive damages was raised on the motion for directed verdict (Transcript, p. 272). The Petitioner did not make any request to charge on the Statute or Federal decisions on punitive damages, but in view of the Court's ruling that the Federal Statute must be "proved" and no evidence on this point had been introduced, such a request would obviously have been useless.

On motion for a new trial (Transcript, p. 345, Grounds 24, 25, 26) Petitioner again urged that the court should have applied the Federal Law, but the Lower Court denied the motion without explanation (Transcript, pp. 346-347).

The issue with regard to the Federal Law was presented to the South Carolina Supreme Court by Petitioner's Exceptions Nos. 3 and 4, which read as follows:

> "(3) That the Court erred in submitting the issue of punitive damages to the jury and in refusing Defendant's Motion for a judgment *non obstante veredicto* as to punitive damages in that the Court failed to apply the applicable Federal Law relating to Interstate Commerce including the 'Carmack-Cummins Amendment', 49 U. S. C. A., Section 20 (11) and the applicable Federal decisions relating to the right to recover punitive damages against a corporation.
>
> "(4) That the Court erred in failing to give full faith and credit to the United States Constitution and Statutes and decisions of the United States Courts in an action for damages to interstate shipment of property, when the Federal question was established by the pleadings and the evidence, and was clearly before the Court." (Transcript, p. 348.)

The South Carolina Supreme Court held that the Carmack-Cummins Amendment should not have been charged:

> "That statute, with certain exceptions, imposes absolute liability on an interstate carrier for loss, damage or injury to property caused by it. Defendant

took the position at the trial that this statutory liability was inapplicable because this action sounded in *tort* and was based upon specific allegations of negligence. Counsel for plaintiffs acquiesced in this view, and the trial judge instructed the jury that the burden was on plaintiffs to prove actionable negligence. To have instructed the jury on the carrier's statutory liability would have been inconsistent with the theory on which the case was tried.

"Furthermore, counsel for defendant responded in the negative when asked at the conclusion of the charge whether there were 'any objections to the instructions or requests for additional instructions,' and no exceptions to the charge have been taken on this appeal." (Opinion, Appendix A, p. 13.)

It is submitteed that the issue with regard to the applicability of Federal Law was raised by the pleadings, discussed with the Court in the pre-trial conference, made manifest by the evidence, presented in the motion for a directed verdict, and in post trial motions to the lower court, and again before the South Carolina Supreme Court.

REASONS FOR GRANTING THE WRIT

This case clearly involved interstate commerce by a regulated carrier and falls squarely under the provisions of the Carmack-Cummins Amendment, 49 U. S. C. A. Sec. 20 (11). It is clear that this statute supersedes any State laws, and "The construction, application and effect of the provisions of acts of Congress relating to the subject present Federal questions with respect to which the decisions of the United States courts are controlling." 14 Am. Jur. (2d), "Carriers", Section 518. See also *Missouri Pacific Railroad Co. v. Elmore and Stahl*, 377 U. S. 134, 84 S. Ct. 1142, 12 L. Ed. (2d) 194 (1964); "the liability of a carrier for damage to an interstate shipment is a matter of Federal Law controlled by Federal statutes and decisions."

The court is the case of *St. Louis Mountain and Southern Railway Co. v. C. A. Starbird*, 37 S. Ct. 462, 243 U. S. 592, 61 L. Ed. 917 (1917) reaffirmed the holding of *Adams v. Crosinger*, 226 U. S. 491, 33 S. Ct. 148, 57 L. Ed. 319 (1913) that the Carmack Amendment "superseded State Law" and held:

> "As the shipment in this case was interstate, there can be no question that since the decision in the *Crosinger* case, *supra*, the parties are held to the responsibilities imposed by the Federal Law, to the *exclusion* of all other rules of obligation." (Emphasis added.)

In *St. Louis Mountain and Southern Railway Co. v. Starbird, supra*, the Supreme Court recognised that, "The alleged right of a Federal character must in some way be drawn to the attention of the State Court so that it may know, or from the nature of the pleadings, be held to have known, that a Federal right was before it for adjudication." However, it pointed out that no particular form was necessary:

> "The Carmack Amendment is a Federal statute regulating Interstate Commerce."
>
> • • •
>
> "Since the passage of the 'Carmack Amendment', the State Court *must be held to have known that interstate shipments were covered by uniform Federal rules* . . . (Emphasis added.)
>
> • • •
>
> "The Federal right is not required to be pleaded in any special or particular form. It is enough that it is relied upon and in a proper manner called to the attention of the court."

The Supreme Court then held that reference to the bill of lading in the answer was sufficient to bring the Federal question to the attention of the court.

The pleadings show the action to be one against the common carrier for damage in an interstate shipment. The

bill of lading was introduced in evidence. The Plaintiffs' attorney agreed that the matter was covered by I. C. C. law and there were frequent references to the bill of lading, tariffs and I. C. C. regulations.

The Defendant did not introduce the Federal statute into "evidence." On the motion for a directed verdict, the court held that it was not required to take judicial notice of statutes of the United States:

> "The only thing that the court would take judicial notice of is the statutes of the State of South Carolina. All other statutes, laws of other states, *laws of the United States, must be properly proved and properly introduced into evidence.*" (Emphasis added.) (Transcript, p. 285.)

This is a clear misconception of the law by the State Judge. The correct rule is stated in 29 Am. Jur. (2d), Evidence, Sec. 32:

> "All courts, federal and state alike, take judicial notice of the provisions of the United States Constitution, and the amendments and the ratification of amendments thereto. Moreover, all courts, federal and state alike, take judicial notice of the public and general acts of Congress. Judicial notice in regard to congressional enactments is not limited to their existence, wording, and interpretation, but extends to all matters connected therewith."

The Court here has awarded $45,000.00 punitive damages against Petitioner. The actual damage found by jury amounted to only $5,103.00, so that the punitive damages are almost nine times the actual.

The South Carolina Supreme Court held that Petitioner's driver owed a duty of a "reasonably diligent inspection" and "the record leaves no doubt that he violated this duty, and the jury could with reason find that he did so wilfully or recklessly." (Opinion, Appendix A, p. 13.)

Regardless of the applicability of Federal Law to the question of actual damages, it is clear that the State court has decided the question of punitive damages under the law of South Carolina and in a way probably not in accord with the applicable decisions of the Supreme Court. The Carmack Amendment provides that a shipper may recover "full actual loss." There is accordingly no provision for punitive damages. The fact that the Federal Rule with regard to punitive damages differs from the South Carolina Rule has been recognized by the South Carolina Supreme Court in an Interstate Commerce case:

> "Since the passage of the Carmack Amendment, it has been pointed out repeatedly by the courts that by this enactment Congress intended to take possession of the field of interstate commerce, and thereby supersede all state laws and regulations with reference to it.
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> • • •
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> "It may be that under the facts and inferences which might be drawn therefrom, the lower court would have been justified in submitting this question to the jury if the South Carolina law were applicable.
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> • • •
>
> "We think it evident from a reading of the instructions given by the trial court to the jury that due effect was not given to the Federal law respecting the right to recover punitive damages in connection with an interstate shipment of merchandise. In fact, the Federal law and the Federal decisions were deemed inapplicable. The case, apparently, was presented to the the jury upon the theory that the law of South Carolina . . . controlled the rights and liabilities of the parties.
>
> • • •
>
> "The Federal rule and the State rule differ materially in respect to the award of punitive damages, the former restricting the right to recover such damages, the latter being without these qualifying restrictions. Therefore, if the Federal law governs, the State law

must yield and being superseded, can have no application. The shipment being interstate. the rights and liability of the parties are controlled and determined solely by the acts of Congress, the shipping receipt which forms the contract between the parties and the common law as administered and interpreted by the Federal courts." *Huddy v. Railway Express Agency, Inc.*, 181 S. C. 508, 188 S. E. 247 (1936).

Here the judge charged the jury on the applicable State law on the question of punitive damages.

This Court should not permit a State court to disregard the Interstate Commerce clause and the applicable Federal statutes. Certainly a State court should not be permitted to refuse to take judicial notice of a statute of the United States directly governing the subject matter of the action.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the South Carolina Supreme Court.

Respectfully submitted,

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